

systems. Nothing in this part exempts rehabilitation from the requirements of part 8 of this title concerning accessibility to persons with disabilities.

§ 401.453 Housing quality standards.

(a) *Standards.* The Restructuring Plan must require the owner to maintain the project, for the duration of the Use Agreement under § 401.408, in a decent and safe condition that meets the applicable standards under this section. As long as project-based assistance is provided, the applicable standards are the physical conditions standards for HUD housing in § 5.703 of this title. At any other time, the applicable standards are the local housing codes or codes adopted by the public housing agency if such codes meet or exceed the standards in § 5.703 of this title and do not severely restrict housing choice or, if there are no such local housing codes or codes adopted by the public housing agency, the standards in § 5.703 will apply. In addition, any unit in which the tenant receives tenant-based assistance must comply with the housing quality standards of the section 8 tenant-based programs.

(b) *Reserves.* The Restructuring Plan must also provide for reserves for capital replacement sufficient to assure the property's long term structural integrity so that the property can be maintained as affordable housing in decent and safe condition meeting the standards of this section.

§ 401.460 Modification or refinancing of first mortgage.

(a) *Principal amount.* As part of the Restructuring Plan, the PAE will determine the size of the restructured first mortgage that will result from the modification or refinancing of the existing FHA-insured or HUD-held first mortgage. The restructured first mortgage must be in the amount that can be supported by net operating income based on the lower of the restructured section 8 rents or the rents allowed by the Use Agreement under § 401.408. Neither the outstanding principal balance of the existing first mortgage, nor the monthly principal and interest payments on that debt, may be increased through the Restructuring Plan. The debt service coverage used by the PAE

must be adequate for purposes of the Restructuring Plan and for the requirements of any refinancing.

(b) *Fully amortizing.* The modified or refinanced first mortgage must be fully amortizing through level monthly payments.

(c) *Rates and other terms.* Interest rates and other terms of the modified or refinanced first mortgage must be competitive in the market.

(d) *Fees.* Any fees or costs associated with mortgage modification or refinancing determined by the PAE to be above normal processing fees must be paid by the owner from non-project funds and must not be included in the modified or refinanced first mortgage.

(e) *Refinancing.* (1) If the holder of the existing FHA-insured first mortgage does not agree to modify and re-amortize the outstanding loan, the loan must be refinanced.

(2) The refinancing may be either without credit enhancement or with credit enhancement under one of the following:

(i) *FHA mortgage insurance.* If the Restructuring Plan provides for FHA mortgage insurance for the refinanced first mortgage, the insurance will be provided in accordance with all usually applicable FHA legal requirements except that insurance will be documented as provided in section 517(b)(2) of MAHRA. HUD will issue the commitment for mortgage insurance but may adapt its procedures as necessary to facilitate development and implementation of a Restructuring Plan.

(ii) *Other FHA credit enhancement.* If FHA credit enhancement, including risk-sharing, is provided under part 266 of this title, the credit enhancement will be provided in accordance with all usually-applicable FHA legal requirements under part 266 of this title, except that special approval from HUD will be required before the PAE engages in risk-sharing with FHA under part 266 of this title.

(iii) *Credit enhancement from non-FHA sources.* If credit enhancement is to be provided by a non-FHA source under section 517(b)(4) of MAHRA, HUD will consider waiver of any non-statutory provision in this part only if the waiver will not materially impair achievement of the purposes of MAHRA and if

the waiver is essential to meet the legitimate business or legal requirements of the provider of credit enhancement.

§ 401.461 HUD-held second mortgage.

(a) *Amount.* If the Restructuring Plan provides for payment of a section 541(b) claim, the Plan must also provide for a second mortgage to HUD in an amount that does not exceed the amount that the PAE reasonably expects to be repaid based on objective criteria such as the amount of anticipated net cash flow, trending assumptions, amortization provisions, and expected residual value of the project. The second mortgage also must not exceed the difference between the unpaid principal balance on the first mortgage immediately before and after restructuring.

(b) *Terms and conditions.* (1) The second mortgage must have an interest rate of at least 1 percent, but not more than the applicable Federal rate. Interest will accrue but not compound.

(2) The second mortgage must have a term concomitant with the modified or refinanced first mortgage. HUD may provide that if the first mortgage of a nominal amount is satisfied, the second mortgage may continue for a term established by HUD.

(3)(i) Principal and interest on the second mortgage is payable only out of net cash flow during its term. "Net cash flow" means that portion of project income that remains after the payment of all required debt service payments on the modified or refinanced first mortgage, if any, including payment of any past due principal or interest, and payment of all reasonable and necessary operating expenses (including deposits to the reserve for replacement account) and any other expenditure approved by HUD.

(ii) The priority and distribution of net cash flow is as follows:

(A) HUD or the PAE may approve the payment to the owner of up to 25 percent of net cash flow based on consideration of relevant conditions and circumstances including, but not limited to, the project management meeting the management standards prescribed in § 401.484 and the project meeting the housing quality standards prescribed in § 401.453; and

(B) All remaining net cash flow will be applied to the principal and interest on the second mortgage, until paid in full, and then to any additional subordinate mortgage under § 401.461(c).

(4) HUD may cause the second mortgage to be immediately due and payable on the grounds provided in section 517(a)(4) of MAHRA, including an assumption of the mortgage in violation of HUD standards for approval of transfers of physical assets (if applicable), or if the owner fails to comply with other HUD requirements after a reasonable opportunity for the owner to cure such failure. A decision by HUD in this regard is subject to the administrative appeals procedure in subpart F of this part.

(5) HUD will consider modification or forgiveness of all or part of the second mortgage only if the project has been sold or transferred to a priority purchaser under § 401.480 and HUD determines that modification or forgiveness is necessary to recapitalize the project in order to preserve it as affordable housing.

(c) *Additional mortgage to HUD.* If the amount of a section 541(b) claim under § 401.471 exceeds the principal amount of the second mortgage, a Restructuring Plan may require the owner to give an additional mortgage on the project to HUD to secure repayment of that portion of the claim that is not already secured. This additional mortgage must be junior in priority to the second mortgage required by paragraph (a) of this section, bear interest at the same rate which will accrue but not compound, and require no payments except payment in full when the second mortgage is satisfied.

[63 FR 48943, Sept. 11, 1998; 63 FR 71373, Dec. 28, 1998]

§ 401.471 HUD payment of a section 541(b) claim.

HUD will pay a section 541(b) claim from the appropriate insurance fund to the insured mortgagee on behalf of the mortgagor to reduce the principal balance of the insured mortgage as provided in the Restructuring Plan. All section 541(b) claims will be paid in cash. Part 207 of this title and sections 207(g) and 541(a) of the NHA do not apply to a section 541(b) claim.